

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

LILLIAN GOLENIEWSKI,

No. 13-10977

Debtor(s).

LINDA GREEN, Trustee,

Plaintiff(s),

v.

A.P. No. 16-1020

RICHARD CHEN, et al.,

Defendant(s).

Supplemental Memorandum re Timeliness of Complaint

The court has previously ruled that for limitation purposes the date of the transfer was the date of deposit of the deed into escrow. To the extent that an unpublished decision held otherwise, the court need only comment that it was unpublished.

Green has created a triable issue of fact as to the date the deed was deposited into escrow by pointing out alleged inconsistencies in the testimony of Chen's witness. While the court's general knowledge of how title companies work makes it probable that the deed was deposited before escrow

1 closed, it should hear evidence on the issue before ruling so summary adjudication is not possible.

2 Relying on *In re Olson*, 36 F.3d 71 (9<sup>th</sup> Cir.1994), Green argues that the limitation period was  
3 equitably tolled. While that case certainly establishes that the period *can* be equitably tolled, it appears  
4 to be a question of fact as to whether in this case it *should* be tolled. The transfer in *Olson* was to a  
5 relative of the debtor and the trustee was found to be without any fault or want of diligence. In this  
6 case, the transfer was to a third party and Green acknowledges that she failed to record her bond.

7 The court suggests that the current trial date of March 21 be used only to hear evidence  
8 regarding the timeliness of the complaint, with other issues to be decided thereafter, by further trial or  
9 summarily, if Green prevails. However, since the whole trial will take less than a day the court is  
10 willing to hear and decide all issues on March 21 if that is the desire of the parties.

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12 Dated: March 1, 2017

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Alan Jaroslovsky  
U.S. Bankruptcy Judge